



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

A-570-010, A-583-853

Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China and Taiwan: Initiation of Antidumping Duty Investigations

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: (Insert date of publication in the Federal Register.)

FOR FURTHER INFORMATION CONTACT: Jeffrey Pedersen at (202) 482-2769 (the People's Republic of China (PRC)); or Karine Gziryanyan at (202) 482-4081 (Taiwan), AD/CVD Operations, Enforcement and Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petitions

On December 31, 2013, the Department of Commerce (the Department) received antidumping duty (AD) petitions concerning imports of certain crystalline silicon photovoltaic products (certain solar cells and panels) from the People's Republic of China (PRC) and Taiwan.¹ The Petitions were filed in proper form on behalf of SolarWorld Industries America, Inc. (Petitioner). Petitioner is a domestic producer of solar cells and panels. The Petitions were accompanied by a countervailing duty (CVD) petition on imports of certain solar cells and panels from the PRC. On January 3, 6, 9 and 10, 2014, the Department requested additional

¹ See Petitions for the Imposition of Antidumping Duties on Imports of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China and Taiwan," dated December 31, 2013 (the Petitions).

information and clarification of certain areas of the Petitions. Petitioner filed responses to these requests on January 8, 9, 13, 15, and 17, 2014.

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), Petitioner alleges that imports of certain solar cells and panels from the PRC and Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that such imports are materially injuring, and threatening material injury to, an industry in the United States. Also, consistent with section 732(b)(1) of the Act, the Petitions are accompanied by information reasonably available to Petitioner supporting its allegations.

The Department finds that Petitioner filed these Petitions on behalf of the domestic industry because Petitioner is an interested party as defined in section 771(9)(C) of the Act. The Department also finds that Petitioner has demonstrated sufficient industry support with respect to the initiation of the AD investigations that Petitioner is requesting.²

Periods of Investigations

Pursuant to 19 CFR 351.204(b)(1), because the Petitions were filed on December 31, 2013, the period of investigation (POI) for the PRC investigation is April 1, 2013, through September 30, 2013. The POI for the Taiwan investigation is October 1, 2012, through September 30, 2013.

² See the “Determination of Industry Support for the Petitions” section below.

Scope of the Investigations

The products covered by these investigations are certain solar cells and panels from the PRC and Taiwan. For a full description of the scope of the investigations, see the “Scope of the Investigations” in Appendix I of this notice.

Comments on the Scope of Investigations

During our review of the Petitions, the Department issued questions to, and received responses from, Petitioner pertaining to the proposed scope to ensure that the scope language in the Petitions would be an accurate reflection of the products for which the domestic industry is seeking relief. Also, on January 15, 2014, Suniva, Inc. (“Suniva”), a U.S. producer of certain solar cells and panels, submitted comments on the scope.³ As discussed in the preamble to the regulations,⁴ we are setting aside a period for interested parties to raise issues regarding product coverage. Parties should note that when considering product coverage with respect to these investigations, the Department will be informed by the product coverage decisions that it made in the investigations that resulted in the existing orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the PRC.⁵ The Department encourages all interested parties to submit such comments by 5:00 pm Eastern Time on February 11, 2014. All comments must be filed on the records of the PRC and Taiwan AD investigations, as well as the concurrent PRC CVD investigation.

³ See Letter from Suniva, dated January 15, 2014.

⁴ See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997).

⁵ In the investigations covering crystalline silicon photovoltaic cells, whether or not assembled into modules, from the PRC, the Department determined that modules, laminates, and panels produced in a third-country from cells produced in the PRC are covered by the scope of the investigations; however, modules, laminates, and panels produced in the PRC from cells produced in a third-country are not covered by the scope of the investigations.

Filing Requirements

All submissions to the Department must be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS).⁶ An electronically filed document must be received successfully in its entirety by 5:00 pm on the date of the applicable deadline. Documents excepted from the electronic submission requirements must be filed manually (i.e., in paper form) with the APO/Dockets Unit of Enforcement and Compliance, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadline.

Comments on Product Characteristics for Antidumping Duty Questionnaires

The Department requests comments from interested parties regarding the appropriate physical characteristics of certain solar cells and panels to be reported in response to the Department's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant factors and costs of production (COPs) accurately as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: 1) general product characteristics and 2) product-comparison criteria. We note that it is not always appropriate to use all product characteristics as product-comparison criteria. We base product-comparison criteria on meaningful commercial differences among products. In other words, while there may be some

⁶ See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures, 76 FR 39263 (July 6, 2011) for details of the Department's electronic filing requirements, which went into effect on August 5, 2011. Information on help using IA ACCESS can be found at <https://iaaccess.trade.gov/help.aspx> and a handbook can be found at <https://iaaccess.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

physical product characteristics utilized by manufacturers to describe certain solar cells and panels, it may be that only a select few product characteristics take into account commercially-meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, we must receive comments on product characteristics by February 5, 2014. Rebuttal comments must be received by February 12, 2014. All comments and submissions to the Department must be filed electronically using IA ACCESS, as referenced above.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the “industry” as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,⁷ they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department’s determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.⁸

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioner offers a definition of the domestic like product that includes certain crystalline silicon photovoltaic cells and modules and notes that the like product definition in this proceeding is identical to the definition of the like product in the Department’s and the ITC’s investigation of crystalline silicon photovoltaic cells, whether or

⁷ See section 771(10) of the Act

⁸ See USEC, Inc. v. United States, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing Algoma Steel Corp., Ltd. v. United States, 688 F. Supp. 639, 644 (CIT 1988), aff’d 865 F.2d 240 (Fed. Cir. 1989)).

not assembled into modules, from China.⁹ According to Petitioner, “{t}he definition of the domestic like product in the Petition differs only slightly from the proposed scope of the investigations....” and “slight differences in the definition of the domestic like product and the scope of an investigation are permissible under the statute....”¹⁰ Based on our analysis of the information submitted on the record, we have determined that certain crystalline silicon photovoltaic cells and modules constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product.¹¹

In determining whether Petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the Petitions. To establish industry support, Petitioner provided its own production of the domestic like product in 2012, and compared this to the estimated total production of the domestic like product for the entire domestic industry.¹² Petitioner obtained total 2012 production of the domestic like product using data published by Solar Energy Industries Association/Greentech Media Research in U.S. Solar Market Insight 2012 Year in

⁹ See Volume I of the Petitions, at 24; see also General Issues Supplement to the Petitions, dated January 9, 2014 (General Issues Supplement), at Exhibit I-Supp-1; Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Initiation of Antidumping Duty Investigation, 76 FR 70960, 70961 (November 16, 2011); Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Initiation of Countervailing Duty Investigation, 76 FR 70966, 70967-8 (November 16, 2011); and Crystalline Silicon Photovoltaic Cells and Modules from the People’s Republic of China, Inv. Nos. 701-TA-481 and 731-TA-1190 (Final) USITC Pub. 4360 (December 2012), at 6-12.

¹⁰ See General Issues Supplement, at 4.

¹¹ See Antidumping Duty Investigation Initiation Checklist: Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China (PRC AD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China and Taiwan (Attachment II); and Antidumping Duty Investigation Initiation Checklist: Certain Crystalline Silicon Photovoltaic Products from Taiwan (Taiwan AD Initiation Checklist), at Attachment II. These checklists are dated concurrently with, and hereby adopted by, this notice and are on file electronically via IA ACCESS. Access to documents filed via IA ACCESS is also available in the Central Records Unit (CRU), Room 7046 of the main Department of Commerce building.

¹² See Volume I of the Petitions, at 8-10 and Exhibits I-3, I-5, and I-6; see also General Issues Supplement, at 5-8 and Exhibits I-Supp-1, I-Supp-2, I-Supp-3 and I-Supp-6.

Review and other publicly available data.¹³ We have relied upon data Petitioner provided for purposes of measuring industry support.¹⁴

On January 10, 2014, in consultations the Department held with respect to the companion CVD case on imports of certain solar cells and modules from the PRC, the Government of China raised the issue of industry support.¹⁵ On January 15, 2014, we received comments on industry support from Yingli Green Energy Holding Company Limited, Yingli Green Energy Americas, Inc., and Canadian Solar Inc (collectively, PRC Producers/Exporters).¹⁶ Petitioner responded to the PRC Producers/Exporters' comments on January 15, 2014.¹⁷ PRC Producers/Exporters filed a rebuttal to Petitioner on January 17, 2014.¹⁸ For further discussion of these comments, see the PRC AD Initiation Checklist and the Taiwan AD Initiation Checklist, at Attachment II.

Based on information provided in the Petitions, supplemental submissions, and other information readily available to the Department, we determine that Petitioner has met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.¹⁹ Based on information provided in the Petitions, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.

¹³ See Volume I of the Petitions, at Exhibits I-5 and I-6.

¹⁴ See PRC AD Initiation Checklist and Taiwan AD Initiation Checklist, at Attachment II.

¹⁵ See Memorandum to the File from Vicki Flynn, dated January 14, 2014, titled "Placing Consultations Memorandum on the AD Records."

¹⁶ See Letter from Yingli Green Energy Holding Company Limited, Yingli Green Energy Americas, Inc., and Canadian Solar Inc., dated January 14, 2014.

¹⁷ See Letter from Petitioner, dated January 15, 2014.

¹⁸ See Letter from Yingli Green Energy Holding Company Limited, Yingli Green Energy Americas, Inc., and Canadian Solar Inc., dated January 17, 2014.

¹⁹ See PRC AD Initiation Checklist and Taiwan AD Initiation Checklist, at Attachment II.

Accordingly, the Department determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.²⁰

The Department finds that Petitioner filed the Petitions on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and that it has demonstrated sufficient industry support with respect to the AD investigations that it is requesting the Department initiate.²¹

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (NV). In addition, Petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.²²

Petitioner contends that the industry's injured condition is illustrated by reduced market share; underselling and price depression or suppression; lost sales and revenues; shuttered production and hindered capacity utilization; reduced employment; and decline in industry financial performance.²³ We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.²⁴

²⁰ Id.

²¹ Id.

²² See General Issues Supplement, at 8 and Exhibit I-Supp-4.

²³ See Volume I of the Petitions, at 5-7, 20-22, 33-67 and Exhibits I-1, I-4, I-13 through I-14, I-16 through I-20, and I-22 through I-30; General Issues Supplement, at 8-9 and Exhibits I-Supp-1, I-Supp-4 and I-Supp-5; and Second General Issues Supplement, dated January 13, 2014 (Second General Issues Supplement), at 5-11 and Exhibits I-Supp-7 through I-Supp-15.

²⁴ See PRC AD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Petitions Covering Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China and Taiwan (Attachment III); see also Taiwan AD Initiation Checklist, at Attachment III.

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which the Department based its decision to initiate AD investigations of imports of certain solar cells and panels from the PRC and Taiwan. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the country-specific initiation checklists.

Constructed Export Price – PRC

Petitioner calculated constructed export price (CEP) based on an offer for sales of solar panels assembled in, and exported from, the subject country by a manufacturer of subject merchandise. Petitioner classified these offers as CEP transactions because it believed that this manufacturer's products were sold by their U.S. affiliates. Petitioner made deductions from the U.S. price for movement expenses, consistent with the delivery terms. Petitioner also deducted from the U.S. price U.S. selling expenses and CEP profit, both of which it estimated using the financial statements of First Solar, Inc., a U.S. producer of solar modules utilizing thin-film technologies.²⁵

Constructed Export Price - Taiwan

Petitioner calculated CEP based on offers for sales of solar panels which were exported from the subject country in the form of laminates and further manufactured in the United States by the U.S. affiliate of the Taiwanese producer of the laminates. Petitioner classified these offers as CEP transactions because it believed that these products were sold by the U.S. affiliate of the Taiwanese producer. Petitioner calculated the further manufacturing costs in the United States using its own production experience and subtracted the further manufacturing cost related to the

²⁵ For details regarding all adjustments to CEP, see the PRC AD Initiation Checklist at 6-8.

production of finished modules in the United States from the quoted U.S. price. Petitioner made deductions from the U.S. price for movement expenses, consistent with the delivery terms. Petitioner also deducted from the U.S. price U.S. indirect selling expenses and CEP profit, both of which it estimated using the financial statements of First Solar, Inc., a U.S. producer of solar modules utilizing thin-film technologies.²⁶

NV – PRC

Petitioner calculated NV for the panels assembled in the PRC using a methodology that was based on the conclusion that the solar cells that were used in the panels were produced in Taiwan from wafers manufactured in the PRC.²⁷ Petitioner states that the Department has long treated the PRC as a non-market economy (NME) country.²⁸ Accordingly, Petitioner calculated the portion of NV that was based on production performed in the PRC using the Department's NME methodology, as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. Specifically, Petitioner calculated the portion of NV relating to production performed in the PRC using factors of production (FOPs) valued in a surrogate market economy country, in accordance with section 773(c) of the Act. Petitioner contends that Thailand is the appropriate surrogate country for the PRC because: 1) it is at a level of economic development comparable to that of the PRC; 2) it is a significant producer of identical merchandise; and 3) that the availability and quality of data are good.²⁹

In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the

²⁶ For details regarding all adjustments to CEP, see the Taiwan AD Initiation Checklist at 6-8.

²⁷ See PRC AD Initiation Checklist, at 6.

²⁸ See Volume II of the Petitions, at 14.

²⁹ *Id.*, at 15-17, 23.

initiation of this investigation. Hence, an NME methodology is appropriate for valuing production performed in the PRC. Moreover, based on the information provided by Petitioner, we believe that it is appropriate to use Thailand as a surrogate country for initiation purposes. After initiation of the investigation, interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value factors of production no later than 30 days before the date of the preliminary determination. In addition, in the course of the investigation covering merchandise from the PRC, all parties, including the public, will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

Petitioner calculated a portion of the NV for the PRC Petition based on the cost of producing solar cells in Taiwan using PRC wafers. Petitioner determined the cost of the solar cells produced in Taiwan by valuing FOPs for the Taiwanese production using import prices in Taiwan.³⁰

Factors of Production

Petitioner based the FOPs for materials, labor, and energy on the consumption rates of a surrogate producer of panels. Petitioner asserts that these consumption rates are reasonably available information, which, to the best of its knowledge, are an appropriate surrogate for consumption of producers of the merchandise under consideration in the PRC because this surrogate producer is comparable to the PRC producers of the merchandise under consideration.³¹

³⁰ See PRC AD Initiation Checklist, at 9.

³¹ See Volume II of the Petitions, at 15, 22-23.

Valuation of Raw Materials and Packing Materials

Petitioner valued the FOPs for various raw material inputs used to produce subject merchandise in the PRC based on Thai import data for the POI from Global Trade Atlas (GTA) under corresponding Harmonized Tariff Schedule (HTS) numbers.³² Petitioner added to the raw material surrogate values the inland freight charges reported for importing goods into Thailand, as published by the World Bank in Doing Business 2014: Thailand.³³ Petitioner excluded from its surrogate values all import values from countries previously determined by the Department to maintain broadly available, non-industry-specific export subsidies and from countries previously determined by the Department to be NME countries.³⁴ In addition, in accordance with the Department's practice, the average import value used as a surrogate excludes imports that were labeled as originating from an unidentified country. We revised the surrogate that Petitioner used to value aluminum frames and frame corners because Petitioner used a HTS number that had been rejected by the Department in a previous AD proceeding involving solar cells and panels from the PRC.³⁵

For production performed in Taiwan for the module assembled in the PRC, Petitioner valued various raw material inputs based on Taiwan import data for the POI from GTA under the applicable HTS numbers.³⁶

³² See PRC AD Initiation Checklist, at 8; see also Volume II of the Petitions, at 26 and Exhibit II-21; First PRC AD Supplement, at 2-3.

³³ See Volume II of the Petitions, at Exhibits II-9; see also First PRC AD Supplement, at 7-8.

³⁴ See Volume II of the Petitions, at Exhibits II-19, II-20 and II-21.

³⁵ See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part, 77 FR 63791 (October 17, 2012) and the accompanying Issues and Decision Memorandum at Comment 16, as amended by Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order, 77 FR 73018 (December 7, 2012); see also PRC AD Initiation Checklist, at Attachment V.

³⁶ See PRC AD Initiation Checklist, at 8; see also Volume II of the Petitions, at 26 and Exhibit II-21; First PRC AD Supplement, at 2-3.

Valuation of Energy

For production performed in the PRC, Petitioner valued electricity using a 2012 electricity rate in Thai baht per kilowatt hour, as reported by the Thai Board of Investment.³⁷ In accordance with the Department's policy not to adjust energy tariffs for inflation if those tariffs are likely still in force, Petitioner did not adjust this value for inflation.³⁸

For production performed in Taiwan, Petitioner utilized Taiwanese electricity rates for industrial users as collected and disseminated by the U.S. Department of Energy.³⁹

Valuation of Labor

For production performed in the PRC, Petitioner valued labor using information published in a 2013 industrial survey by the Thailand National Statistics Office.⁴⁰

For production performed in Taiwan, Petitioner valued labor using 2012 data for Taiwan collected by the U.S. Bureau of Labor Statistics.⁴¹ Petitioner adjusted this rate for inflation by utilizing the consumer price index, as reported by the U.S. Bureau of Labor Statistics.⁴²

Valuation of Factory Overhead, Selling, General and Administrative Expenses, and Profit

Petitioner calculated factory overhead, selling, general and administrative expenses, and profit using data from the 2012-2013 financial statements of Hana Microelectronics Group, a

³⁷ See Volume II of the Petitions, at 26 and Exhibit II-22.

³⁸ Id.; see also Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Antidumping Duty Administrative Review, 2010-2011, 77 FR 61385 (October 9, 2012), and accompanying Preliminary Decision Memorandum at 16, unchanged in Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: 2010-2011; Final Results of Antidumping Duty Administrative Review, 78 FR 5414 (January 25, 2013); Certain Activated Carbon From the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review, 75 FR 70208 (November 17, 2010), and accompanying Issues and Decision Memorandum at Comment 4; and Certain Oil Country Tubular Goods From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination, 74 FR 59117 (November 17, 2009), unchanged in Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping, 75 FR 20335 (April 19, 2010).

³⁹ See Volume II of the Petitions, at 26 and Exhibit II-22.

⁴⁰ Id., at Exhibit II-23.

⁴¹ See Volume II of the Petitions, at 27 and Exhibit II-24.

⁴² Id.

Thai producer of electronics merchandise which Petitioner identified as comparable to the merchandise under consideration.⁴³

NV – Taiwan

Petitioner based NV on price information from a Taiwanese producer of panels for panels sold in the subject country. Petitioner was not able to obtain a price quote for a laminate offered for sale in the home market during the POI, but did obtain a finished module price. The only alleged difference between the finished module and laminate is the final stage of the production of the module. Therefore, Petitioner believes that an adjustment to the home market price for the difference in merchandise is appropriate. Petitioner adjusted the home market price by subtracting from the offered price the further manufacturing cost related to the production of finished modules in the United States, based on Petitioner's own experience. Petitioner made adjustments to NV for movement expenses consistent with the sales terms. Petitioner made no other adjustments to NV.⁴⁴

Fair Value Comparisons

Based on the data provided by Petitioner, there is reason to believe that imports of certain solar cells and panels from the PRC and Taiwan are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of CEP to NV, in accordance with section 773(a)(1) of the Act, the estimated dumping margin for certain solar cells and panels from Taiwan is 75.68 percent.⁴⁵ Based on a comparison of CEP to NV, in accordance with section

⁴³ See PRC AD Initiation Checklist; see Volume II of the Petitions, at 28-29 and Exhibits II-19 and II-24; First PRC AD Supplement at 3-4. and Exhibit II-Supp-2.

⁴⁴ See Taiwan AD Initiation Checklist, at 8-9.

⁴⁵ See Taiwan Initiation Checklist.

773(c) of the Act, the estimated dumping margin for certain solar cells and panels from the PRC is 165.04 percent.⁴⁶

Initiation of Antidumping Duty Investigations

Section 732(b)(1) of the Act requires the Department to initiate an AD proceeding whenever an interested party files an AD petition on behalf of an industry that: (1) alleges the elements necessary for the imposition of a duty under section 731 of the Act; and (2) is accompanied by information reasonably available to the petitioners supporting the allegations.

Based upon the examination of the Petitions on certain solar cells and panels from the PRC and Taiwan, we find that the Petitions meet the requirements of section 732 of the Act. Therefore, we are initiating AD investigations to determine whether imports of certain solar cells and panels from the PRC and Taiwan are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Respondent Selection

The Petition for Taiwan names 21 companies as producers/exporters of certain solar cells and panels. Following the Department's standard practice in AD investigations involving market-economy countries, for the Taiwanese AD investigation we will select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of certain solar cells and panels. We intend to release CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO within five-business days of publication of

⁴⁶ See PRC AD Initiation Checklist.

this Federal Register notice. The Department invites comments regarding respondent selection within seven days of publication of this Federal Register notice.

The Petition for the PRC names 78 companies as producers/exporters of certain solar cells and panels. In accordance with the Department's standard practice in AD investigations involving NME countries, for respondent selection in the PRC AD investigation we intend to issue quantity and value (Q&V) questionnaires to each potential respondent named in the Petition and base respondent selection on the responses to our Q&V questionnaire. In addition, the Department will post the Q&V questionnaire along with the filing instructions on Enforcement and Compliance's website at <http://trade.gov/enforcement/news.asp>. Exporters and producers of certain solar cells and panels from the PRC that do not receive a Q&V questionnaire from the Department may still submit a response to the Q&V questionnaire using a copy of the questionnaire obtained from Enforcement and Compliance's website. The Q&V questionnaire must be submitted by all PRC producers/exporters no later than February 13, 2014. All Q&V questionnaires must be filed electronically using IA ACCESS.

Separate Rates

In order to obtain separate rate status in an NME investigation, exporters and producers must submit a separate rate application.⁴⁷ The specific requirements for submitting the separate rate application in the PRC investigation are outlined in detail in the application itself, which will be available on Enforcement and Compliance's website at <http://trade.gov/enforcement/news.asp> on the date of publication of this initiation notice in the Federal Register. The separate rate application will be due 60 days after publication of this initiation notice. All separate rate applications must be filed electronically using IA ACCESS. For exporters and producers who

⁴⁷ See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries (April 5, 2005) (Separate Rates and Combination Rates Bulletin), available on the Department's website at <http://enforcement.trade.gov/policy/bull05-1.pdf>.

submit a separate rate application and have been selected as mandatory respondents, these exporters and producers will no longer be eligible for consideration for separate rate status unless they respond to all parts of the AD questionnaire as mandatory respondents. The Department requires that PRC producers/exporters submit a response to both the Q&V questionnaire and the separate rate application by their respective deadlines in order to receive consideration for separate rate status.

Use of Combination Rates

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of “combination rates” because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.⁴⁸

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the governments of the PRC and Taiwan via IA ACCESS. Because of the particularly large number of producers/exporters identified in the Petitions, the Department considers the service of the public version of the Petitions to the

⁴⁸ See Separate Rates and Combination Rates Bulletin, at 6 (emphasis added).

foreign producers/exporters to be satisfied by the provision of the public version of the Petition to the governments of the PRC and Taiwan, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine no later than February 14, 2014, whether there is a reasonable indication that imports of certain solar cells and panels from the PRC and Taiwan are materially injuring, or threatening material injury to, a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

On April 10, 2013, the Department published Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule, 78 FR 21246 (April 10, 2013), which modified two regulations related to AD and CVD proceedings: the definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The final rule requires any party, when submitting factual information, to specify under which subsection of 19

CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all proceeding segments initiated on or after May 10, 2013, and thus are applicable to these investigations. Please review the final rule, available at <http://www.gpo.gov/fdsys/pkg/FR-2013-04-10/pdf/2013-08227.pdf#page=1>, prior to submitting factual information in these investigations.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.⁴⁹ Parties are hereby reminded that revised certification requirements are in effect for company/government officials, as well as their representatives. Investigations initiated on the basis of petitions filed on or after August 16, 2013, and other segments of any AD or CVD proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the Final Rule.⁵⁰ The Department intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

Revised Extension of Time Limits Regulation

On September 20, 2013, the Department modified its regulation concerning the extension of time limits for submissions in AD and CVD proceedings. The modification clarifies that

⁴⁹ See section 782(b) of the Act.

⁵⁰ See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings, 78 FR 42678 (July 17, 2013) (Final Rule); see also frequently asked questions regarding the Final Rule, available at http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.

parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under section 19 CFR 351.408(c), or to measure the adequacy of remuneration under section 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning CBP data; and (5) Q&V questionnaires. Under certain circumstances, the Department may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, the Department will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This modification also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which the Department will grant untimely-filed requests for the extension of time limits. These modifications are effective for all segments initiated on or after October 21, 2013. Please review [Extension of Time Limits; Final Rule](#), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>, prior to submitting factual information in these segments.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures, 73 FR 3634 (January 22, 2008). Parties wishing to participate in these investigations should ensure that they meet the requirements of these procedures (e.g., the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to section 777(i) of the Act and 19 CFR 351.203(c).

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

January 22, 2014
(Date)

Appendix I

Scope of the Investigations

The merchandise covered by these investigations is crystalline silicon photovoltaic cells, and modules, laminates and/or panels consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including building integrated materials. For purposes of these investigations, subject merchandise also includes modules, laminates and/or panels assembled in the subject country consisting of crystalline silicon photovoltaic cells that are completed or partially manufactured within a customs territory other than that subject country, using ingots that are manufactured in the subject country, wafers that are manufactured in the subject country, or cells where the manufacturing process begins in the subject country and is completed in a non-subject country.

Subject merchandise includes crystalline silicon photovoltaic cells of thickness equal to or greater than 20 micrometers, having a p/n junction formed by any means, whether or not the cell has undergone other processing, including, but not limited to, cleaning, etching, coating, and/or addition of materials (including, but not limited to, metallization and conductor patterns) to collect and forward the electricity that is generated by the cell.

Excluded from the scope of these investigations are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS). Also excluded from the scope of these investigations are any products covered by the existing antidumping and countervailing duty orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People's Republic of China. See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order, 77 FR 73018 (December 7, 2012); Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Countervailing Duty Order, 77 FR 73017 (December 7, 2012).

Also excluded from the scope of these investigations are crystalline silicon photovoltaic cells, not exceeding 10,000mm² in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cell. Where more than one cell is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all cells that are integrated into the consumer good.

Merchandise covered by these investigations is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 8501.61.0000, 8507.20.8030, 8507.20.8040, 8507.20.8060, 8507.20.8090, 8541.40.6020, 8541.40.6030 and 8501.31.8000. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of these investigations is dispositive.

[FR Doc. 2014-01738 Filed 01/28/2014 at 8:45 am; Publication Date: 01/29/2014]